

Appl. No. 10/626,136  
Amdt. dated January 5, 2005  
Reply to Office action of October 6, 2004

## **REMARKS/ARGUMENTS**

Claims 1-18 are presently pending in the application.

In this amendment, Claims 1, 3-5, 7 and 15 have been amended.

Claims 19-22 have been added.

Claims 8-14 and 17 have been withdrawn from consideration and are not amended.

Claims 2, 6, 16 and 18 remain unchanged.

The pending claims are shown above with the amended claims shown in a redlined format. The amendment to the specification is made by replacing the noted paragraphs with the paragraphs set forth above. As set forth below, the amendments to the Claims are believed to place the Claims in condition for allowance. In view of the amendments, as discussed below, reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

Applicant appreciates the Interview granted by the Examiner on December 21, 2004. During the interview, Applicant's undersigned attorney and Examiner Hail primarily discussed the Nagy reference in view of proposed claim amendments. However, no agreement was reached as to the claims.

### **Restriction Requirement**

Applicant reaffirms the decision to prosecute the claims directed to Species 1, identified by the Examiner as including FIGS. 1-3B, 5 and 12. Claims 1-7, 15, 16

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and 18 are directed to Species 1. Claims 8-14 and 17 have thus been withdrawn from consideration. Applicant, however, notes that at least Claims 1-5, 15 and new Claims 19, 20 and 22 are generic to all the embodiments.

### **Specification**

The Examiner stated in par. 8 (page 3) of the office action that reference number 23 was not included in the application. Applicant respectfully points out that reference number 23 is found in paragraph [0027] of the application, where the application refers to the "heel 23". Withdrawal of this objection to the specification is respectfully requested.

Applicant also notes that several changes have been made to the specification as noted above. These changes correct typographical errors and provide some new or added callouts for various features of Applicant's can openers to better describe the Applicant's inventive can opener. These amendments to the specification only make clear what is inherent from the invention as originally described and shown. Hence, the amendments to the specification do not add new matter to the application.

The amendments to the specification add reference numbers to FIGS. 4, 6 and 7. Two sheets of corrected drawings containing FIGS. 4-7 are filed herewith containing corrected drawings. Also enclosed are two sheets of drawings showing the added reference numbers in red.

### **Applicant's Invention**

Applicant's pull top-type can opener is designed to facilitate people in opening pull-top type products – i.e., cans wherein the can top is intended to be removed to gain access to the contents of the can. Such pull-top type cans include single serving pudding, fruit and soup cans, and pet food cans, etc. With reference to FIGS. 1 and 2 of Applicant's application, an illustrative can opener is shown. As seen, the can opener includes a starting notch 26 which is accessed through a port 30. The bottom surface of the port 30 is defined by a generally flat surface 32 which defines a lip 35 with the heel and which is sized and shaped to fit through the ring of the pull-top tab as seen in FIG. 2 of the instant application. The starting notch 26 is at the rear of the surface 32, and drops below the surface 32. When the pull-top tab is so engaged by the starting notch, the can opener body is pivoted to pivot the tab to raise the free end or ring of the tab and move the fixed end of the tab downwardly. The downward movement of the tab fixed end presses down on the edge of the can lid at the rivet R, to break the seal on the can. After the lid seal has been broken, the starting notch is disengaged from the can lid tab. The can lid tab is then engaged by a finishing notch 28 which is accessed through a port 40. The lip 36 passes through the tab ring such that the tab ring will be engaged by the finishing notch. When engaged by the finishing notch, the body is pivoted to remove the can lid from the can.

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As described in the application, and as described above and in Applicant's attached declaration (Hawkins Dec., ¶¶12-14), use of Applicant's opener is a two stop process in which the opener is repositioned after use of the starting notch (i.e., after the seal has been broken) such that the finishing notch is engaged with the can's pull tab. As seen in FIG. 3A of the application and in Hawkins Dec., Exhibit 2, this repositioning of the can opener provides the user with additional leverage by altering the angle of the opener handle relative to the can. The user can then pivot the opener to remove the can lid, as seen in application FIG. 3B.

In the illustrative embodiment shown in FIG. 1, the port to the finishing notch defines a retaining notch. Thus, when the lid is pried off the can, the can lid will stay on the opener 10 due to the engagement of the tab ring with the retaining notch of the opener.

#### **Nagy Does Not Anticipate The Invention**

The Examiner rejected Claims 1-4, 6, 7, 15, 16 and 18 under 35 U.S.C. §102 as being anticipated by Nagy (Pat. No. 6,311,580). Initially, it is pointed out that Nagy is directed to opening flip top (or beverage type) cans, rather than pull-top cans. That is, Nagy is not directed to an opener which can be used to lift the lid off a can. Further, the opener shown in FIGS. 1 and 2 of Nagy are inoperable if used in the manner described by the Nagy reference. (Hawkins Dec. ¶8)

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Claims 1 and 15 (the only independent claims in the application) both require that the opener include a starting notch, a finishing notch, and a heel. Claim 15 additionally requires that the opener include a retainer “proximate the finishing notch”. In the Office Action, at paragraph 11, the Examiner asserted that “36” is a starting notch which is accessed by a “port 50”<sup>1</sup> and that 44 is a finishing notch accessed by a port 40. Applicant respectfully asserts that Nagy does not include both the starting notch and the finishing notch. Specifically, the space 50 between Nagy’s force application member 36 and the tab engaging member 37 does not form a tab engaging notch. As set forth in Col. 3, lines 3 - 27, of the Nagy patent:

“The opener 10 of the present invention has a main body 30, 130, 230 comprising essentially an elongated lever with the elongated structure having a lift tab securing portion 32, 132, 232 at one end and a handle portion 34, 134, 234 at the opposite end. ... The lift tab securing portion 32, 132, 232 includes a protruding force application element 36, 136, 236 extending generally in the opposite direction from a tab engaging portion 37, 137, 237. The tab engaging portion 37, 137, 237 is defined by an arcuate indentation 39, 139, 239 terminating at either end by protruding tips 38, 138, 238, 40, 140, 240. The upper protruding tip 40, 140, 240 is relatively elongated and may be slid under the lift tab 20 as will be explained in more detail later. The lower protruding tip 38, 138, 238 serves to contain the lift tab 20 during force application to prevent disengagement thereof. The tab engaging portion 37, 137, 237 serves to snugly engage the ring portion 42 of the

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<sup>1</sup> Applicant respectfully notes that in the Nagy patent, “50” refers to a line. At Col. 3, lines 44-50, Nagy states: “Referring again to FIG. 1, it should be noted that the central region 44, 144, 244 of the tab engaging portion 37, 137, 237 is arranged with respect to the tip 46, 146, 246 of the force application element 36, 136, 236 so as to define a straight line 50, 150, 250 parallel to the top of the can 22 when the opener 10 is snugly engaged with the lift tab 20.” (emphasis added)

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lift tab 20 within a central region 44, 144, 244 of the arcuate indentation 39, 139, 239."<sup>2</sup>

While Applicant submits that the description of the Nagy beverage can opener is not entirely clear, from FIG. 4 of the Nagy patent, it can be seen that the end of the protruding force application element (labeled in FIG. 1 as 36 or 46) is placed against the tab rivet, and the tip 40 is passed through the tab ring such that the ring is received in the indentation 39. As can be seen from FIG. 4 of Nagy, and as described at Col. 3, line 63 – Col. 4, line 7, the gap 50 between the force application element 36 and the tip 40 does not receive the tab ring. Hence, the gap 50 is not a "starting notch" which is "sized and shaped to receive a ring of an opening tab or a can to be opened" as set forth in Claims 1 and 15. Thus, Nagy discloses only a single notch, namely, the notch 39.

Further, as is evident from the construction of the shape of the Nagy opener, and as set forth in the attached declaration of Applicant, should the user actually place the tab ring in the gap 50, the can opener would not be operable to lift the lid of a can, as is accomplished by the starting notch of Applicant's can opener. That is, the Nagy opener cannot be used (or is inoperable) when used in the manner in which Applicant's opener is used. (Hawkins Dec., ¶18). Further, as noted above,

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<sup>2</sup> In the second to last sentence of the quoted text of Nagy, Nagy refers to the "lower protruding tip 38". Applicant notes that "38", at least as shown in the Nagy drawings, is an upper tip – that is, it is above the tab engaging element 37.

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the Nagy opener of at least in FIGS. 1 and 2 of Nagy are inoperable when used in accordance with the Nagy patent to open a beverage can. (Hawkins Dec., ¶8)

To clarify the differences between Applicant's can opener and the Nagy opener, Claim 1 has been amended to provide (1) that the heel is "generally U-shaped"; (2) that the opener includes "a tab engaging lip having a surface extending rearwardly from an upper, forward end of said heel; said lip having a length less than the diameter of a ring of a pull-top can opening tab"; (3) that the starting notch is at "a rear end of said tab engaging lip" and that the "starting notch [has] a bottom surface below said lip surface"; and (4) that the "starting and finishing notches [are] sized and shaped to receive a ring of an opening tab of a can to be opened and having a forward surface against which said tab ring can engage".

These amendments to Claim 1 do not add new matter to the application. The generally U-shape of the heel is evident from, for example, FIG. 1; that the starting notch is at the end of the lip surface is evident from all the figures, as is the fact that the starting notch bottom surface is below the lip surface; and that the starting and finishing notches are sized and shaped to receive the tab ring is shown, for example in FIGS. 2-3B.

Nagy does not teach or suggest any of elements noted above. To the extent that the Examiner asserts that the lower surface of the protruding force application element is a heel, it is not U-shaped. Should the Examiner assert that the upper

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surface of the force protruding element is a lip, then Nagy would lack a notch at the back of the lip, as now set forth in Claim 1. Stated differently, Nagy does not teach or suggest the lip/notch combination now set forth in Claim 1. Lastly, Nagy does not teach or suggest a notch having "a forward surface against which said tab ring can engage". This forward surface (for example with reference to the starting notch in FIG. 1) corresponds to the forward edge of the notch 26 extending downwardly from the lip surface 32.

Inasmuch as Nagy does not teach or suggest Claim 1 as currently amended, Claim 1 is not anticipated nor made obvious by Nagy. Further, none of the other references, whether considered individually or in combination of Nagy, teach or suggest an opener for pull-top type cans as is now set forth in Claim 1.

Applicant notes that Otters et al (Pat. No. 5555778) shows a groove at the back of a surface 14 (see FIGS. 9 and 10). However, this surface has a length greater than the diameter of the tab ring, as can be seen in FIGS. 2-5, 9 and 10. Otters et al. require the elongated surface to lift the opening tab by prying on, or rotating about, the can rim, as seen in FIG. 4. Hence, if the surface 22 of Otters were reduced in size, then Otters et al. would be rendered inoperable. Thus, Otters et al. cannot be combined with Nagy to show the lip/notch combination.

The Examiner may also assert that Bittel et al. (Pat. No. 5018409) discloses more of a U-shaped heel. However, there is no teaching or suggestion in either

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Bittel et al. or Nagy that the bottom surface of the Nagy protruding force application element could be modified to be generally U-shaped. Neither Nagy nor Bittel et al. provide any motivation for such a modification. Nor would one skilled in the art in designing such openers be motivated to modify the shape of Nagy as just noted. First of all, because Nagy is designed for opening beverage cans, one skilled in the art in designing can openers would not be motivated to alter the shape of the Nagy opener. Secondly, adding a U-shaped heel to the protruding force application element may render Nagy inoperative.

Thus, Claim 1 is believed to be allowable over all the references of record, whether considered individually or in combination. Claims 2-14 depend from Claim 1 and are similarly believed to be allowable over the references of record.

Claim 15 has been amended to provide (1) that the heel is "generally U-shaped"; (2) that the opener includes "a tab engaging lip having a surface extending rearwardly from an upper, forward end of said heel"; (3) that the starting notch is at "a rear end of said tab engaging lip" and that the "starting notch [has] a bottom surface below said lip surface"; (4) that the "starting notch [is] sized and shaped to receive a ring of an opening tab of a can to be opened and having a forward surface against which said tab ring can engage"; (5) that the retainer is "adapted to maintain a can lid on said opener upon removal of the can lid from its can"; and (6) that "the curvature of the U-shaped heel being sized such that when

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a can opening tab is received in the starting notch, pivoting of the can opener about the heel will pivot the tab sufficiently to cause the tab to break the seal of the can lid and the rounded heel is sized such that when the opening tab is received in the finishing notch, pivoting of the can opener about the heel will remove the lid from the can."

As discussed above with respect to Claim 1, Nagy does not teach or suggest a generally U-shaped heel or the combination of the tab engaging lip with the notch at the back of the lip. Nor does Nagy disclose a "retainer" (or "retaining portion" as termed in Claim 7) which is "adapted to maintain a can lid on said opener upon removal of the can lid from its can". As noted in the instant application, can lids have some spring characteristics, and when the lid is pried off the can, the lid has a tendency to fly off the opener. The "retainer" or "retaining portion" prevents the lid from flying off the opener when the lid is removed from the can. Claims 7 and 15 have been amended to make this clearer. While Nagy includes a gap which receives the tab of a beverage can, the prongs 38 and 40 which define the gap are not shaped to retain a tab should the tab be removed from the can. In fact, due to the shape of the groove 39 and the shape of the prongs 38 and 40, the Nagy opener cannot operate to retain a can lid on the opener if the opener were used to remove a lid from a pull-top type can. (Hawkins Dec. ¶20) Thus, not only does Nagy not teach or suggest a retainer as set forth in Claims 7 and 15, Nagy is inoperable to perform

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the function of Applicant's retainer or retaining portion. For this reason, Claims 7 and 15 are not anticipated or made obvious by Nagy.

During the interview, the Examiner queried as to whether Kelly (Pat. No. 5,309,794) would operate to retain the can lid on the opener. Applicant made a sample of the Kelly opener and tried the Kelly opener on pull-top type cans. Applicant found that due to the forces applied to the lid when the lid separates from the can, that the lid simply slides around the Kelly opener and flies off the opener. (Hawkins Dec., ¶¶25-26). Hence, the Kelly opener does not function to retain the can lid on the opener.

Lastly, the Nagy patent is inoperable if used as set forth in the last paragraph of amended Claim 15. That is, the curvature of the prong 36 is not sufficient to lift the tab if a tab should be placed in the space between the protruding force application element and the tab engaging element; nor is the curvature of the prong 36 sufficient to lift or pry the lid off the can if the tab is placed in the gap between the prongs 37 and 38. (Hawkins Dec., ¶¶16-24).

Thus, Nagy does not teach or suggest at least the noted elements set forth above. Hence, Claim 15 is believed to be allowable over Nagy. Claims 16-18 depend from Claim 15 and are similarly believed to be allowable.

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**Claim 5 is not obvious over Nagy in view of Kelly**

The Examiner also rejected Claim 5 under 35 U.S.C. §103 as being unpatentable over Nagy in view of Kelly (Pat. No. 5,309,794). Claim 5 depends from Claim 1 via Claim 4. In view of the amendment to Claim 1, Claim 5 was amended to provide that the intersection between the lip (or port lower surface) and the heel defines an acute angle. Claim 5 is respectfully asserted to be allowable for the same reasons set forth above in conjunction with Claim 1.

Kelly is directed to an opener for a pull-top type can. However, as can be seen from the Kelly patent, the Kelly opener is substantially different in construction and operation from Applicant's claimed opener. The Examiner notes that Kelly teaches that the end of the prong 15 is flattened. However, as noted above, Nagy does not teach or suggest all the elements of Claim 1, from which Claim 5 depends. If the rounded prong of Nagy were replaced with the prong of Kelly having a flat lower surface, the combination would still not teach or suggest Applicant's claimed invention. What would result, is that the prong 40 of Nagy would have a flattened end defining an acute angle. However, with this change, the modified Nagy opener still would not have a starting notch at the back end of the flat surface. Nor would the modified Nagy opener have a finishing notch. That is, Nagy would still only have a single tab engaging notch. Thus, the combination of Nagy and Kelly does not make

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Claim 5 obvious. Claim 5 is thus believed to be allowable over the combination of Nagy and Kelly.

### **New Claims**

New Claims 19-21 depend from Claim 15 and define the retainer. As set forth in Claim 21, the retainer comprises a “pathway extending from said finishing notch toward a surface of said body to define a port in said body surface; said port being above said finishing notch.” Claim 22 depends from Claim 21 and provides that the pathway is generally J-shaped; and Claim 23 depends from Claim 22 to provide that the pathway is a generally inverted J-shaped pathway. Applicant respectfully points out that Claims 21 and 22 cover at least the embodiments shown in FIGS. 1, 4, 6 and 7-11 of the application; and that Claim 23 covers at least the embodiments shown in FIGS. 8-11.

None of the references whether considered individually or in combination teach or suggest such a retainer. Of the references of record, only Coker (Pat. No. 4362071) and Otters et al. are believed to teach or suggest a pathway leading to a notch. However, in the Coker reference, the port into the pathway is below the notch, rather than above the notch, as set forth in Claim 21. Applicant respectfully points out that with the pathway below the notch, once the can lid is removed from the can, the lid tab will have a tendency to fall along the pathway of Coker, rather than falling into the finishing notch, as will occur in Applicant’s opener. Hence, the

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structure of Coker will not efficiently operate to retain the lid on the opener. In the Otters et al. reference, as noted above, the groove is at the back end of a long surface, which cannot be shortened without destroying the operability of Otter et al.

New Claim 22 depends from Claim 1 and provides that the heel defines a fulcrum about which the body rotates during opening of the can. Specifically, Claim 22 provides that the heel/fulcrum enables the opener to "(1) raise the can opening tab when the tab is engaged in the starting notch and to (2) pry the can lid off the can when the tab is engaged in the finishing notch. As discussed above in conjunction with Claim 15, Nagy does not operate in this manner and cannot be operated in this manner. Nor is there any suggestion or teaching in the art to modify Nagy so as to operate in this manner.

### **Other References**

There were other references made of record either by Applicant or by the Examiner which are directed to openers for pull-top type cans. For example, in addition to Coker and Otters et al., Osmar et al. (Pat. No. 5095777), Bittel (Pat. No. 5018409), Kubach et al. (Pat. No. 4287794), Eve et al. (Pat. No. 5913953), and possibly FR 2778649 describe openers for pull-top type cans.

None of the references, whether considered individually or in combination, teach or suggest an opener as now set forth in Claims 1 and 15. Hence, Claims 1 and 15 are believed to be novel and non-obvious. The remaining claims all depend

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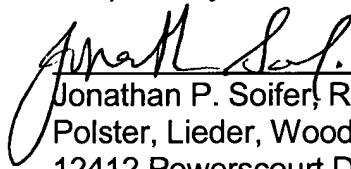
from Claims 1 or 15, and thus are similarly believed to be allowable over the references of record.

### **Summary**

In view of the forgoing, Claims 1-7, 15, 16 and 18-22 are believed to be in condition for allowance. Additionally, in view of the fact that at least Claim 1 is generic with respect to all the embodiments, the Examiner is requested to withdraw the restriction requirements and allow Claims 8-14 and 17 as well. A Notice of Allowability with respect to these Claims 1-22 is thus respectfully requested.

Respectfully Submitted,

Dated: 1/5/05

  
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**Amendments to the Drawings:**

The attached two sheets of drawings includes changes to Figs. 4, 6 and 7. These sheets, which include Fig. 4-7, replaces the original sheets containing Figs. 4-7. Also attached are two sheets of drawings showing, in red ink, the changes made to FIGS. 4, 6 and 7.

Attachment: Two Replacement Sheets and Two marked up sheets

**OPENER FOR PULL TOP-TYPE CANS**  
**(Sheet with changes)**

Atty.: Jonathan P. Soifer, Reg. No. 34,932 HAWK 8693US

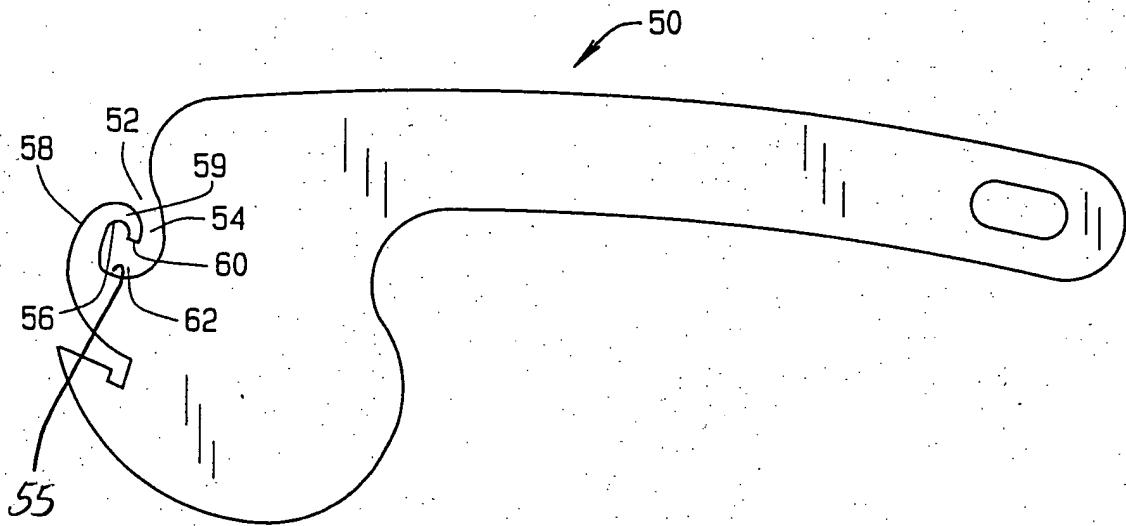


FIG. 4

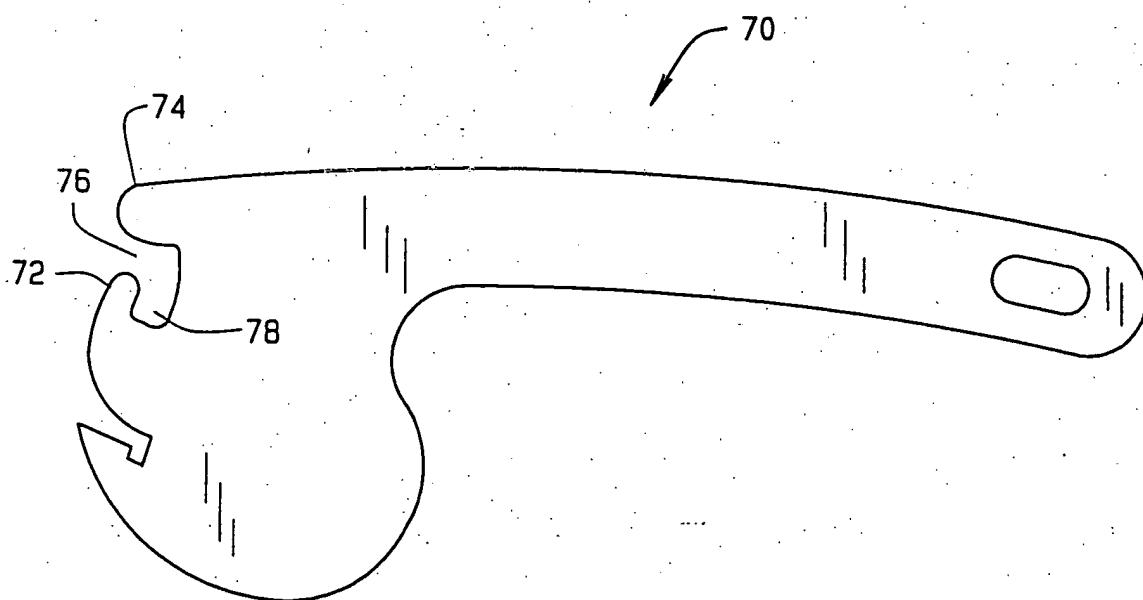


FIG. 5

OPENER FOR PULL TOP-TYPE CANS  
(Sheet with changes)

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